

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the City Of
Richmond for an order preserving the wigwag
warning devices at the Richmond Avenue
Crossing in the City of Richmond, Contra Costa
County, California.

Application 02-05-065
(Filed May 31, 2002)

**MEDIATOR'S RULING REGARDING PROCESS,
PREPARATION AND DATE FOR MEDIATION**

1. Summary

This Ruling discusses the mediation process, identifies initial steps parties should take in preparation, and sets the mediation for 10:00 a.m. on Wednesday, October 30, 2002, in Room 5100, State Office Building, 505 Van Ness Avenue, San Francisco, California.

2. Background

The Assigned Commissioner describes this proceeding as follows:

“Applicant City of Richmond (City) seeks to prevent Burlington Northern and Santa Fe Railway Company (Burlington) from removing two wigwag warning devices (wigwags) from the Richmond Avenue grade crossing in the Point Richmond area of the City as part of work to upgrade the signals at the crossing. Burlington’s planning for the signal upgrade began in the early 1990’s. The work did not begin until January 2002, under a Service Contract originally executed in November 1999 and extended in November 2001. The City, asserting that Burlington had failed to obtain a required encroachment agreement for the work, issued a stop work order on January 19, 2002. Work on the signal upgrade

was then halted at a stage of about 70% completion, according to Burlington's estimate.

"This dispute comes to the Commission because the City claims that Burlington was required to get permission from the Commission in order to undertake the signal upgrade, but did not do so. Burlington asserts that it has received all relevant approvals and that the City may not interfere with the completion of the upgrade. The City now seeks a Commission order to preserve the wigwags." (September 20, 2002 Scoping Memo and Ruling of Assigned Commissioner, pages 1-2.)"

Parties have agreed to attempt resolution of this dispute by using the Commission's mediation services. (Reporter's Transcript, Prehearing Conference, September 11, 2002, pages 29 and 38.) I held a conference call with parties on October 10, 2002, for the purpose of setting a date for the mediation, plus discussing the mediation process and initial preparation.

3. Process and Initial Preparation

As discussed in the conference call, the process is informal, confidential and voluntary. The City expects to have three representatives at the mediation, and Burlington expects to have four or five. Representatives should include decision-makers for each party.

Participants for each party should discuss the following five issues internally in advance of the mediation. That is, each party's representatives should discuss these issues among themselves, but not necessarily with representatives of the other party.

1. What are your goals;
2. What alternatives are available to reach those goals;
3. What has kept the parties from settling;
4. What criteria will you use to evaluate the offers to be presented at the mediation by the other party; and

5. What will the other party need to hear from you to accept your offer.

The mediation will begin with introductions and my opening remarks. Each party may then present an opening statement. The statement should explain how the party views the matter, and might address what it generally hopes to accomplish through mediation. The statement should be brief (e.g., no more than 5 minutes). The City will start, followed by Burlington.

After the opening session, I will likely meet individually with each party in a series of successive caucuses. We may have one or more joint sessions as they become useful. The mediation will close, if successful, with a joint written statement of the settlement for presentation to Administrative Law Judge Simon.

The success of mediation depends upon each party's willingness to cooperate in an effort to seek a mutually agreeable outcome. Each party should approach the mediation with an open mind, apply a good faith effort to the process, and make an honest attempt to seek a solution. Neither party is ultimately required to accept a mediated outcome to which it does not agree.

Each party should be candid with the mediator, and may rely on discussions with the mediator being held confidential unless specifically agreed otherwise. The mediator will make no report to Judge Simon regarding the discussions or outcome other than to state: (a) that an outcome was reached which parties will provide to Judge Simon, (b) that no outcome was reached, or (c) scheduling details (e.g., if the mediation is rescheduled).

Some mediation participants may not be on the service list, and will not directly receive a served copy of this Ruling. As a result, I ask that the appearance for each party (Wayne Nishioka for City, and R. Curtis Ballantyne for Burlington) give a copy of this Ruling to each mediation participant for their respective party in advance of the mediation.

4. List of Participants and Mediation

By 3:00 p.m. on October 29, 2002, the appearance for each party should send a note to me by electronic mail. The note should list the names of those who will attend the mediation on October 30, 2002. Please send a copy of the note by electronic mail to the appearance representing the other party. I will provide the list of attendees to the Commission's security personnel. This should facilitate the process of signing in and obtaining passes to the fifth floor on the day of the mediation.

On the morning of October 30, 2002, each person must first sign in with the security desk in the Commission's main lobby. Substitute or alternate participants may attend the mediation on October 30, 2002, whether or not they were named on October 29, 2002.

Please have the security guards call me when you have signed in (phone: 703-2504), and take the elevator to the fifth floor. I will meet you in the fifth floor elevator lobby, and escort you to Room 5100.

The mediation will begin at 10:00 a.m. I expect that we will be done no later than 5:00 p.m., although we may work longer if all participants agree, and if permitted by building security personnel.

5. Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings. (Pub. Util. Code § 1701.2(b), and Rule 7 of the Commission's Rules of Practice and Procedures.) The mediator is not a decision-maker, however, for the purposes of ex parte communications in this proceeding.

IT IS RULED that:

1. In advance of the mediation, the appearance for each party shall provide a copy of this Ruling to each mediation participant for that party. Further, the

mediation participants for each party shall discuss internally, among themselves, the five issues identified in this Ruling.

2. By 3:00 p.m. on October 29, 2002, the appearance for each party shall send a note to me by electronic mail (bwm@cpuc.ca.gov). The note shall identify mediation participants. A copy of the note shall also be sent electronically to the appearance for the other party (wnishioka@ci.richmond.ca.us; cballantyne@hfbllp.com).

3. The mediation shall begin at 10:00 a.m. on Wednesday, October 30, 2002, in Room 5100, State Office Building, 505 Van Ness Avenue, San Francisco, California. A representative for each party shall be prepared to make an opening statement of no more than five minutes. Parties shall approach the mediation with an open mind, apply a good faith effort to the process, and make an honest attempt to seek a solution. Neither party is ultimately required to accept a mediated outcome to which it does not agree.

4. Ex parte communications in this proceeding are prohibited, pursuant to Pub. Util. Code § 1701.2(b), and Rule 7 of the Commission's Rules of Practice and Procedure. The mediator is not a decision-maker for the purposes of the ex parte communications in this proceeding.

Dated October 18, 2002, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Mediator's Ruling Regarding Process, Preparation and Date for Mediation on all parties of record in this proceeding or their attorneys of record.

Dated October 18, 2002, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

A.02-05-065 BWM/jyc